



NATIONAL ASSOCIATION OF CONSUMER AGENCY ADMINISTRATORS

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April 18, 1993

Office of the Secretary
Federal Communications Commission
Washington, DC 20544

Re: Docket No. 93-22

Policies and Rules Implementing the Telephone
Disclosure and Dispute Resolution Act

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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The National Association of Consumer Agency Administrators (NACAA) appreciates the opportunity to comment on the proposed regulations under the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA).

NACAA's 150 members head consumer offices at the city, county, state and federal levels and work on the front-lines of consumer protection, mediating complaints, enforcing consumer laws and regulations, conducting public education, and advocating for consumer legislation. Over the past few years, our member agencies have recieved thousands of complaints concerning problems with pay-per-call services.

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These complaints include: failure to adequately disclose the cost of calls, disguising pay-per-call services through the use of toll-free numbers, misleading representations about the products or services provided, circumventing existing pay-per-call regulation by use of collect calls and third-party billing entities, inappropriate targeting of pay-per-call solicitations to children, and difficulty resolving billing disputes.

We believe that the TDDRA and the regulations promulgated under it by the Federal Communications Commission and the Federal Trade Commission should provide strong protections for consumers and clear guidelines for legitimate members of the pay-per-call industry. To that end, we are submitting changes to the regulations proposed by the Federal Communications Commission that we feel are necessary to address the spectrum of problems our member agencies have seen.

We are appending a copy of our comments on the regulations proposed under the TDDRA by the Federal Trade Commission for your information.

64.1501 Definition of Pay-Per-Call Services

In exempting certain situations under 64.1501(b), the rule should specify that a presubscription or comparable arrangement must be evidenced by written agreement with the provider, prior to the initiation of the call.

64.1502 Limitations on the Provision of Pay-Per-Call Services

Under the TDDRA, common carriers have a clear duty to ensure that the providers of pay-per-call services are using the lines to which they are assigned appropriately, and to terminate service when there are abuses. Their contracts or tariffs should require that providers comply with the TDDRA and the regulations promulgated thereunder and with all other applicable federal or state laws.

In some instances, carriers contract with service bureaus, who in turn sell the use of the lines to the pay-per-call providers. Therefore, in this and other sections pertaining to the relationship between carriers and pay-per-call providers, service bureaus should be included.

64.1503 Termination of Pay-Per-Call Programs

To reduce the potential for on-going consumer harm, the regulations should require carriers to immediately suspend service which appears to violate any applicable federal or state laws or regulations. Carriers may then follow their own procedures, or those that the Commission

~~may prescribe to determine whether service should be~~



In other cases, consumers who call toll-free numbers are called back collect by the providers in order to circumvent pay-per-call regulations. Local numbers may also be used to connect consumers to pay-per-call services through Call Forwarding.

It is imperative that consumers be able to distinguish between calls that are free and those for which there are charges by prohibiting pay-per-call providers from using 800 or other toll-free numbers, as stated in Section 64.1504(b).

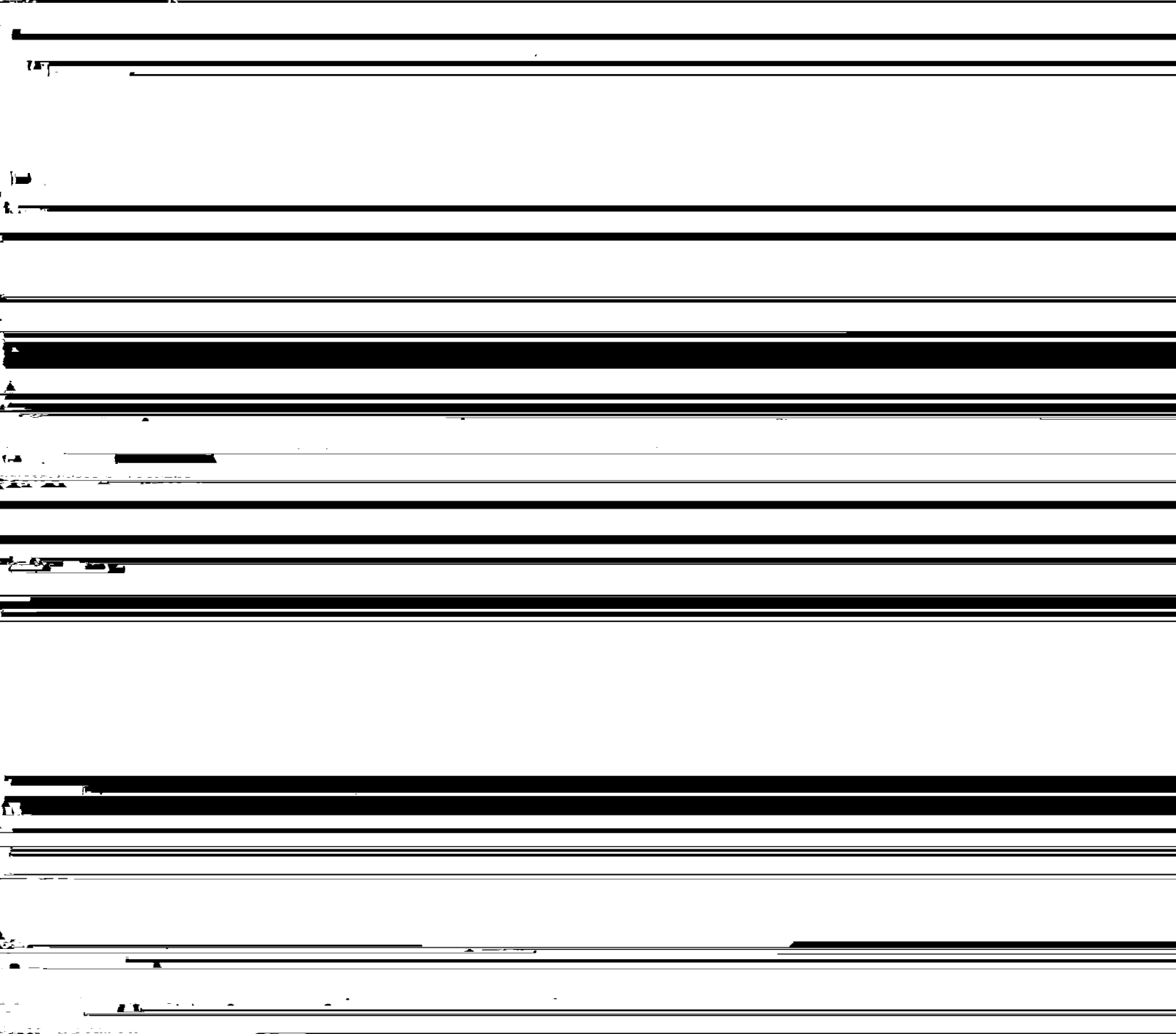
We are concerned that the provisions of Section 64.1504(c) create a significant loophole that could defeat the intent of Congress and the preceeding subsection of the proposed regulations by allowing the use of toll-free numbers for pay-per-call services under certain circumstances.

When data services are provided over toll-free lines pursuant to preexisting agreements with subscribers, those consumers clearly understand that they are purchasing a service for which they will be charged, usually on their credit card accounts. But as we have already seen, there is great potential for fraud and abuse when consumers are asked for their credit card numbers in calling toll-free lines for simultaneous voice conversations, contests, and other types of pay-per-call services.

Therefore, we strongly urge that the exception for use of toll-free numbers under 64.1504(c) should be specifically limited by defining "information" as data services. It should be further stated that the consumer protections required by the TDDRA and the regulations promulgated thereunder apply to the provision of any pay-per-call services allowed under this subsection.

64.1505 Restrictions on Collect Telephone Calls

Because collect calls are used to circumvent federal and state laws requiring preambles and other consumer protections, the rules should require carrier consents and



64.1507 No Disconnection or Interruption of Service for Failure to Remit Pay-Per-Call or Similar Service Charges

Neither interstate nor intrastate telephone service should be interrupted or disconnected for failure to remit pay-per-call charges.

64.1508 Blocking Access to 900 Service

The simplest and most direct solution to unauthorized charges or charges that may result from unfair, misleading or deceptive practices is to require carriers to block pay-per-call services unless consumers affirmatively request access to them. The obligation should be on the providers to market their services, rather than on consumers to block services they never requested.

At a minimum, if consumers must request blocking, carriers should be required to provide free blocking for at least 60 days from initiation of service or the effective date of these regulations.

However, the regulations should state that carriers are not precluded from offering free blocking for a longer or indeterminate period of time. Carriers should also be required to offer free blocking after consumers have contested pay-per-call charges.

64.1509 Disclosure and Dissemination of Pay-Per-Call Information

Our member agencies report that consumers often receive bills for pay-per-call services showing business names that are different than those used in advertisements.

Section 64.1509(a)(4) and (b)(1) should require carriers and service bureaus to provide the name that the provider used in advertising the service, as well as its legal name, if different. In addition, the complete street address from which the business is actually conducted should be provided, as opposed to a post office box or a street address representing a site used only for receipt or delivery of mail or by a telephone answering service.

Carriers and service bureaus should also provide federal and state agencies and other interested parties with information, on request, about any complaints it has received concerning specific pay-per-call providers.

The rules should also require carriers to take all reasonable measures to disseminate information to consumers on a frequent and regular basis about their rights concerning pay-per-call services.

64.1510 Billing and Collection of Pay-Per-Call Charges

Section 64.1510(a) should require carriers and service bureaus to ensure that subscribers are not billed for pay-per-call services provided in violation of any applicable federal or state laws.

Under subsection (b), bills should include the name that the provider used in any advertising for the service, as well as its legal name, if different, and the complete street address as we specified in the previous section. The type of service should also be clearly identified as set forth in Section 228(d)(4)(B) of the TDDRA.

The regulations should also prohibit carriers from billing on behalf of pay-per-call providers for any collect calls to subscribers.

Bills for pay-per-call services should contain clear notice that service cannot be interrupted or terminated for failure to remit pay-per-call charges, specify the procedure and time limit for disputing charges, and advise consumers that the provider may pursue other methods of collection even if charges are removed.

64.1511 Forgiveness of Charges and Refunds

The rules should specify time limits for forgiveness of charges and refunds consistent with Section 308.7(k) of the rules proposed by the Federal Trade Commission under the TDDRA.

Charges should be forgiven or refunded for violations of any applicable federal or state law. Carriers should monitor pay-per-call providers to ensure compliance.

In formulating regulations for determining whether there are sufficient grounds to remove or refund charges, or to require providers to have third-party billing entities do so, the Commission should consider the precedent already set by many carriers. They have adopted policies under which they can consider taking immediate action upon receipt of complaints and information about possible violations of state and federal law from local, state and federal consumer agencies.

64.1512 Involuntary Blocking of Pay-Per-Call Services

We support involuntary blocking of pay-per-call services where there is no legitimate basis for refusal to pay them.

64.1513 Verification of Charitable Status

The granting of tax exempt status by the Internal Revenue Service (IRS) is not sufficient verification of an organization's charitable status. Carriers should require pay-per-call providers that solicit charitable contributions to document their status by submitting a copy of their IRS Determination Letters.

64.1514 Generation of Signalling Tones

It is crucial to continue this prohibition in order to combat the egregious abuses often targeted to children.

64.1515 Recovery of Costs

Carriers can recover the cost of complying with the regulations through the pricing of the telephone numbers they assign to service bureaus and pay-per-call providers. They should be expressly prohibited from recovering such costs from local or long-distance ratepayers.

Conclusion

NACAA believes that by incorporating the changes we have presented, the protections provided to consumers under these rules will be further strengthened, without adversely affecting legitimate members of the pay-per-call industry. We will continue to work with the Commission and others to implement the provisions of this important consumer protection legislation. For more information, please contact NACAA President Susan Giesberg or Public Policy Chair Susan Grant through our Washington office.

NACAA//

NATIONAL ASSOCIATION OF CONSUMER AGENCY ADMINISTRATORS

1010 VERMONT AVENUE, N.W., SUITE 514, WASHINGTON, D.C. 20005 • (202) 347-7395

April 8, 1993

Office of the Secretary
Federal Trade Commission
Room 159
Washington, DC 20580

Re: FTC File No. R311001
Proposed Telephone Disclosure Rule

The National Association of Consumer Agency Administrators (NACAA) appreciates the opportunity to comment on the proposed regulations under the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA).

NACAA's 150 members head consumer offices at the city, county, state and federal levels and work on the front-lines of consumer protection, mediating complaints, enforcing consumer laws and regulations, conducting public education, and advocating for consumer legislation. Over the past few years, our member agencies have received thousands of complaints concerning problems with pay-per-call services.

These complaints include: failure to adequately disclose the cost of calls, disguising pay-per-call services through the use of toll-free numbers, misleading representations about the products or services provided, circumventing existing pay-per-call regulation by use of collect calls and third-party billing entities, inappropriate targeting of pay-per-call solicitations to children, and difficulty resolving billing disputes.

We believe that the TDDRA and the rules promulgated under it by the Federal Trade Commission and the Federal Communications Commission should provide strong protections for consumers and clear guidelines for legitimate members of the pay-per-call industry. We commend the Federal Trade Commission for the process it has used to solicit information and consult with public and private sector interests in drafting the proposed rules. Although many of our concerns are met, we are submitting changes that we feel are necessary to address the spectrum of problems our member agencies have seen. Our comments follow in order by section and question number.

Section 308.2 Definitions

308.2(a)

The difficulty in defining or listing examples of a bona fide educational service is illustrated by the current debate over what constitutes educational programming under the Children's Television Act of 1990. However, it might be helpful to specify some types of services that would not be appropriate to target to children because of the potential for abuse, such as trivia games, contests, or

Section 308.3 Advertising308.3(a)(1)(ii)

Price disclosure is a basic tenet of informed consumer choice. It is not always clear from the context of the advertisement that there is no limit to the cost of a time-sensitive call where no total cost can be determined. Therefore, the words "unless it is otherwise clear from the context that such is the case" should be deleted .

308.3(a)(1)(v)

The rules should prohibit transferring a call to another pay-per-call service. Even if the additional costs are disclosed, we believe that it is misleading to advertise goods or services through a pay-per-call number when consumers must pay for multiple calls to obtain them.

308.3(a)(3)(i), (ii), and (iii)

Audio cost disclosures should be made immediately after each time that the pay-per-call number is provided by

308.3(b)(1)

This section should include the statement that compliance does not preclude the application and enforcement of any state laws that may apply to these practices. The use of sweepstakes or games of chance to offer reductions in costs for goods or services should be prohibited because of the potential for the kinds of abuses that many enforcement agencies have encountered with fictitious price comparisons.

The rules should also require that the values of prizes may only be used in pay-per-call sweepstakes solicitations if they are based on the actual selling prices of those items in the geographic areas in which the advertisements are made or the service provider's wholesale cost for those items.

We are absolutely opposed to aggregating the values of prizes, since this could lead consumers to believe that their individual awards may be much more valuable than they are. No payment, other than the cost of the call, should be allowed as a condition for the consumer to receive a gift, prize or award. Furthermore, the termination date of a sweepstakes offer should be no longer than six months from when it is first made.

308.3(b)(3)(i), (ii), and (iii)

The disclosures should be made in the same manner as we have noted for 308.3(a). Information about the free alternate method of entry into the sweepstakes should be given in every medium in which it is advertised.

308.3(c)

Disclosures by non-government providers of information about government programs should be made with the same frequency and clarity as other important material disclosures.

308.3(d) and (e)

Since undefined terms such as primarily and predominantly do not give sufficient guidance, the criteria to meet the presumption that advertising is not targeted to individuals

under ages 18 or 19 should be specified in the rules in

Question 16

The rules should prohibit advertisements for pay-per-call services in which consumers must call more than one number

Section 308.5 Pay-Per-Call Standards

308.5(a)

The preamble should include the name that the provider uses in any advertising. Furthermore, this section should require that the preamble must be given at the beginning of the introductory message, not sandwiched between incidental information.

308.5(a)(2)(iv)

Callers should not be transferred to other pay-per-call services, as this invites abuse. All advertised products or services should be provided in the initial call.

308.5(a)(4)

The rules should require that the parental consent warning be stated on no higher than a fifth-grade level.

308.5(b)

Five seconds should be the minimum time allowed for consumers to hang up without charge after the preamble. We strongly oppose allowing the program to commence immediately after the preamble because this will be confusing for consumers. The disconnect interval should be silent.

308.5(d)

The bypass instructions should be at the end of the preamble, after all other disclosures are made.

308.5(i)

The bill should show the name that the provider used in any advertisements, as well as the legal name, if different.

The provider's address should also be required.

Question 25

Question 29

Service bureaus should be liable if they know or should have known that providers are violating these rules, since they provide them with the pay-per-call lines and other services. Therefore, they should be obliged to monitor those providers to ensure compliance.

Question 30

The idea of requiring consumers to have PIN numbers is appealing because it would reduce the potential for unauthorized calls, but it is impractical since it is unclear who consumers would obtain the PIN numbers from and who would monitor the data base.

The simplest and most direct solution to this problem is to require carriers to block access to pay-per-call services unless consumers affirmatively request it, rather than to require consumers to make the effort to block access (often after problems have already arisen). The obligation should be on the providers to market their services, not on consumers to block services that they never requested.

Question 31

Our members are concerned about problems with erratic billing for pay-per-call services. In some cases, consumers have not received bills until months after calls were purportedly made, resulting in astronomical bills which they could have avoided by arranging for blocking had they been alerted to the problems earlier. Furthermore, irregular or excessively long billing cycles make it difficult for consumers to question or dispute the charges. Therefore, the rules should require consumers to be billed no later than thirty days after the calls are made.

Section 308.6 Access to Information

The rules should require carriers to maintain records of arrangements for pay-per-call services for at least as long as the applicable statute of limitations. Furthermore, those records should be available to state officials, as well as the Commission, since they share enforcement authority. Service bureaus should also be required to maintain such records.

Section 308.7 Billing and Collection**Question 33**

It is unclear whether the definition for "preexisting agreement" under Section 304(1)(A) of the TDDRA is the same as presubscription under 308.2(e) of the proposed rules. The former seems to exclude as a "telephone-billed purchase" a situation in which, for instance, a consumer calls a business to complete a transaction that was initiated earlier and is billed by the vendor for the goods, not the call. The latter appears to exempt services that would otherwise be considered "pay-per-call" from the requirements of the rules if there is a subscription or other pre-arranged contractual agreement for those services.

308.7(a)(1)

Third party billers should be expressly included in the definition of billing entities. It is vital to cover them under these rules, since they are not otherwise regulated.

308.7(a)(2)

Billing errors should include calls not made by or authorized by the customer of record. Parents must be able to dispute calls made by children without their consent.